

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 1 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SAVITABEN WD/O RATANLAL KALIDAS

Versus

PARIKH KANVHANLAL MAGANLAL

Appearance:

MR KC SHAH for Appellants

MR JIVANLAL G SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. The present respondent filed Civil Suit No. 225
of 1979 in the Court of Civil Judge (JD) at Sankheda

against the present appellants for recovery of possession of the House No. 482 situated at village Bhuriyakuva from the present appellants as according to the case of the plaintiff they were licensees. As per the brief facts of the plaintiff's case, deceased Ratanlal Kalidas was the son of maternal uncle of deceased Parikh Maganlal Bapubhai. The suit property i.e. House bearing No. 483 originally owned by Parikh Maganlal Bapubhai and the plaintiff i.e. present respondent, is the adoptive son of Parikh Maganlal Bapubhai. Ratanlal Kalidas had no provision for his residence due to his financial position and, therefore, out of sympathy, the above said suit house was given by Parikh Maganlal Bapubhai to Ratanlal Kalidas for occupation without any rent or fees, etc. Previously, deceased Ratanlal Kalidas was running a shop in the suit property and then he left village Bhuriyakuva about 10 to 15 years prior to filing of suit and had settled at village Bodeli, leaving the suit property vacant and locked. Therefore, Ratanlal Kalidas was called upon to hand over possession of the suit property, but he did not hand over the property to the plaintiff and, thereafter Ratanlal Kalidas died around in 1979 at village Bodeli and since then the possession of the suit property remains with the defendants No. 1 to 5 i.e. present appellants No. 1 to 5. Present appellant No.6 is original defendant No.6 with whom the present respondents No. 1 to 5 have entered into an agreement to sell the suit property and hence defendant No.6 was impleaded in the litigation.

2. During the life time of deceased Ratanlal Kalidas, his name was mutated in the village panchayat record as owner through mistake and plaintiff had to apply to the gram panchayat for correcting the record. At that time deceased Ratanlal Kalidas admitted before the Panchayat authority that the suit property was of the ownership of the plaintiff i.e. Parikh Maganlal Bapubhai and he was given the suit property because of the relation without charging any rent, etc and, therefore, the name of deceased Ratanlal Kalidas was deleted from the property register of the village gram panchayat as an owner of the property. Somewhere, in 1966- 67, the name of Ratanlal Kalidas in the panchayat register came to be mutated again. That, after issuing the notice through the advocate basing his claim on title, plaintiff filed the above said suit on 15th November, 1979.

3. The suit was resisted by the present appellants. Appellant No.1 filed written statement (Exh.7), but she did not step in the witness box. By an implication in the written statement, it was admitted that the plaintiff

was the adopted son of deceased Parikh Maganlal Bapubhai and that the suit property belonged to the deceased Parikh Maganlal Bapubhai, but it was contended that the suit property came to Ratanlal Kalidas because it was given by Parikh Maganlal Bapubhai to the deceased husband of defendant No.1 Ratanlal Kalidas before 30 to 35 years and since then the suit property remained in possession with them. Defendant No.6 i.e. present respondent No.6 also filed written statement (Exh.21). He contended that he was a bona fide purchaser for valuable consideration without notice. Therefore, plaintiff was not entitled to the possession of the suit property.

4. Learned trial judge after full fledged trial, hearing both the parties, came to the conclusion that the suit property was of the ownership of the plaintiff and that the same had been given to deceased Ratanlal Kalidas for the purpose of residence and business without charging any rent, etc. by way of sympathy. Trial Judge also negatived the contention of the defendant that the property was given by Parikh Maganlal Bapubhai to deceased Ratanlal Kalidas before 30 to 35 years prior to the filing of the suit and the suit was decreed for the possession.

5. Being aggrieved, the present appellants filed the First Appeal before the District Judge at Vadodara, being Regular Civil Appeal No. 24 of 1981, which came to be heard by Extra Assistant Judge, Vadodara and after hearing both the sides, vide its judgment dated 20th April, 1983, learned Extra Assistant Judge, Vadodara, dismissed the Appeal and hence being aggrieved, the original defendants have filed this Second Appeal.

6. At the time of admission, this Court framed the following substantial question of law :

" Whether in the facts and circumstances of the case the plaintiff, respondent herein has a subsisting title to the suit property and whether the right of plaintiff and his predecessor is extinguished in the peculiar facts and circumstances of the case. "

7. Learned Advocate Mr. K.C.Shah for the appellants was heard at length. Learned Advocate Mr.Jivanlal G. Shah for the respondent is also heard. I have gone through the records very carefully and entirely and with reference to the substantial question of law, the evidence and the facts of the case are also well scrutinised.

8. Learned Advocate for the Appellants Mr. K.C. Shah argued that the question of extinguish of the rights of the plaintiff has not been considered by the courts below and that is exactly the substantial question of law framed in this Appeal. It is urged that right from 1951 til the date of the filing of the suit, the present appellants No. 1 to 5 wherein possession of the suit property. After so many years of the possession, according to Mr. Shah, the right of the plaintiff extinguishes. Learned Advocate for the appellants Mr. Shah has drawn the attention of this Court to Section 27 of the Limitation Act, which provides that on expiry of the period of limitation prescribed under the Limitation Act, the right of the parties extinguishes. Learned Advocate Mr. K.C. Shah further argued that it is the case of the plaintiff that the possession of the defendants was permissive. The suit was required to be brought within 3 years from the date of the giving of possession of the suit property to the defendants as per the residuary Article 113 of the Indian Limitation Act, 1963 and, therefore, since suit is not brought within three years from the date of handing over of possession to the defendants, the right of the plaintiff is extinguished according to Section 27 of the Indian Limitation Act. Learned Advocate Mr. Shah further urged that this issue requires consideration and, therefore, the matter is required to be remanded to the trial court as well as to the appellate court for deciding the issue regarding extinguishment of the right of the plaintiff in the suit property.

9. Having considered the contentions raised on behalf of the appellants and with reference to the substantial question of law as framed and with reference to the facts and circumstances and the evidence adduced in the matter, I am unable to accept the contentions raised by learned Advocate Mr. K.C. Shah on behalf of the appellants.

10. Suffice it to note that in written statement by defendant No.1 at Exhibit No.17 and deposition at Exh.47 by defendant No.5, it is amply clear that the suit house belonged to Parikh Maganlal Bapubhai. It was also admitted that the plaintiff was the adopted son of deceased Parikh Maganlal Bapubhai. In ordinary course, the plaintiff would become the owner of the house, however, the defendants have further contended that the suit house was given by deceased Parikh Maganlal Bapubhai to deceased Ratanlal Kalidas before 30 to 35 years prior

to the filing of the suit and therefore they are the owners. Undoubtedly, defendants were required to prove the contention that the suit property was given to the deceased Ratanlal Kalidas before 30 to 35 years prior to the filing of the suit but the defendants have miserably failed to establish this fact and when this fact is considered with the contention of the plaintiff and as admitted by the defendants that the suit house belonged to deceased Parikh Maganlal Bapubhai, and that the plaintiff was the adopted son of deceased Parikh Maganlal Bapubhai. It is crystal clear that the plaintiff is the owner of the suit property. The trial court as well as the appellate court did not accept the contention of the defendants because through evidence the defendants could not prove the above fact because defendant No.1 in her written statement at Exh.17 contended that the suit property as above said was given to the deceased Ratanlal Kalidas before 30 to 35 years, but defendant No.5 did not step into the witness box while defendant No.1 who stepped in the witness box, and his deposition was recorded at Exh. 47, deposed that the suit property was gifted by deceased Parikh Maganlal Bapubhai to deceased Ratanlal Kalidas, but there was no gift deed. Therefore, the defendants could not prove the fact that they enjoyed the suit property as owners. On the contrary, the plaintiff has produced on record at Exh.49 i.e. statement of deceased Ratanlal Kalidas before the Panchayat authority somewhere about in 1951. It is proved that in property tax register of the gram panchayat, as an owner, the name of Ratanlal Kalidas was shown. On behalf of the plaintiff, this was objected to before the gram panchayat. Thereafter, the statement of Ratanlal Kalidas was recorded by the panchayat authority, wherein he stated that the suit property was owned by Parikh Maganlal Bapubhai and the suit property was given to him for residence out of relationship on free of rent and without charges. This statement clearly denotes that the defendants i.e. the present appellants were permissive users of the suit premises and the findings of both the courts below regarding this requires no interference at all.

11. So far as the contention raised by Mr. K.C. Shah regarding extinguishing of the rights of the plaintiff is concerned, obviously, Article 65 of the Indian Limitation Act, 1963 would govern the facts of the case because the suit of the plaintiff is filed for the recovery of possession based on title and that is apparent from the relief claimed in the plaint. By no stretch of reasoning this suit could be governed by residuary Article 113 of the Indian Limitation Act as

contended by Mr. K.C. Shah, learned Advocate for the appellants. Now as per Article 65 of the Indian Limitation Act, 1963, 12 years limitation is prescribed for recovery of possession of immovable property or any interest therein based on title and the period of limitation as prescribed under Article 65 commences when the possession of the defendants becomes adverse to the plaintiff. The 12 years starts from the date from which the possession of the suit premises becomes adverse to the plaintiff. Now, there is nothing on the record on behalf of the defendants that the possession of the premises became adverse to the plaintiff for more than 12 years. It is not proved by the defendants that they enjoyed possession of the premises as an owner and within the knowledge of the owner that they are the owners of the suit premises and the plaintiff is not the owner of the suit premises. Therefore, animus title as contemplated by the principle of adverse possession neither has been pleaded by the defendants nor has been proved. The question of extinguishment of right on expiring of the limitation as per Section 27 of the Indian Limitation Act, 1963 as contended by Mr. K.C. Shah would not arise at all in the facts and circumstances of the present case.

11. The substantial question of law raised is therefore decided accordingly that the right of the plaintiff as owner of the suit property therefore subsists and not extinguished in the facts and circumstances of the case.

12. In this view of the matter, there is no substance in the Appeal and the same is dismissed with no order as to costs.

(J.R. VORA, J.)

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